

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2923-01
Bill No.: HB 1329
Subject: Children and Minors; Crimes and Punishment
Type: Original
Date: February 5, 2002

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
General Revenue	More than (\$100,000)	More than (\$100,000)	More than (\$100,000)
Total Estimated Net Effect on <u>All</u> State Funds	More than (\$100,000)	More than (\$100,000)	More than (\$100,000)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Social Services** assume the proposal increases penalties for certain types of sexual abuse of children. It deals wholly with criminal procedures and will not change the operation of the child Abuse & Neglect Hotline. Therefore, the proposed legislation would have no fiscal impact on their agency.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Office of Prosecution Services** assume the proposed legislation would have no fiscal impact on prosecutors.

Officials from the **Office of State Public Defender** assume existing staff could provide representation for those cases arising where indigent persons were charged with the enhanced crime of repeat child molestation or the new crimes of child molestation in the 3rd and 4th degree. Last FY, the State Public Defender provided representation in 110 cases of child molestation and 29 cases of child molestation in the 2nd degree. However, passage of more than one bill increasing penalties on existing crimes or creating new crimes would require the State Public Defender System to request increased appropriations to cover the cumulative cost of representing indigent persons accused in the now more serious cases or in the new additional cases.

Officials from the **Department of Corrections (DOC)** assume the proposal revises provisions of various sexual offenses involving children. It also creates the crime of child molestation III and IV and denies the perpetrator's presence at the victim child's deposition.

Section 566.067 would amend the criteria for child molestation 1st degree. Currently this offense is a class B felony unless the individual displays a weapon, causes injury, or has previously been convicted of this offense, in which case it is a class A felony. The bill would include prior guilty pleas and convictions or guilty pleas in other states when determining the felony class (currently only prior Missouri convictions apply).

At the end of FY 01, there were 181 individuals incarcerated for child molestation in the first degree, a class B felony. Data is not available on an individual's prior crimes, only on prior incarceration. Nineteen percent of the inmates incarcerated (34) had served prior time in prison. It is not known if the time was served for child molestation or if it was in a state other than Missouri. There were 67 admissions, 19% of which had served prior prison time in FY 01. The effect would be significant if even a few cases were applicable, as the average time served in prison for a class A felony is 38.9 months longer than for a class B felony. On average, those

incarcerated for child molestation are currently serving around 47 months, so the impact would ASSUMPTION (continued)

be felt in approximately 4 years.

Section 566.068, Subsection 1 would amend the crime of child molestation. Currently an individual who has sexual contact with an individual under 17 is guilty. The bill would make sexual contact a crime if the victim was under 16 and the perpetrator was over 21.

The DOC does not have data available pertaining to the age of the victim. Therefore, the impact to the DOC is unknown.

Section 56.068, Subsection 2 would change child molestation in the second degree from a class A misdemeanor to a class C felony. Prior and persistent would change from a class D felony to a class B felony. The prior and persistent wording would also change to include prior guilty pleas and convictions or guilty pleas in other states as prior offenses (only convictions in Missouri are currently applicable).

At the end of FY 01, there were 26 open probation cases in which the probationer had a conviction for 2nd degree child molestation, a class A misdemeanor. There were 15 probation openings for 2nd degree child molestation during FY 01. If the bill passes, those individuals could receive prison instead of probation. The average time served in prison for a class C felony is 12.6 months. Since class A misdemeanants receive probation, not prison, any impact would be immediate. Passage of the bill could necessitate up to 15 to 16 additional beds per year if all offenders were sentenced to term. In FY 01, 52% of class C felons received a term sentence. Using those proportions, 10.67 beds per year could be needed.

Section 566.069, Subsections 1 and 2 would add a new crime of child molestation in the 3rd degree if a person touches a person in a way that would be sexual contact, but the touching occurs through clothing and the person touched is under 13 years of age. Child molestation in the 3rd degree would be a class D felony unless there are prior convictions or guilty pleas or a weapon is used in the commission of the crime, in which case it would be a class C felony.

Section 566.069, Subsections 3 and 4 would add a new crime of child molestation in the 4th degree if a person touches a person in a way that would be sexual contact, but the touching occurs through clothing and the person touched is under 16 years of age. Child molestation in the 4th degree would be a class A misdemeanor unless there are prior convictions or guilty pleas or a weapon is used in the commission of the crime, in which case it would be a class D felony.

These Section 566.069 crimes are new crimes. The DOC has no data available for analysis. The impact on the DOC is unknown.

ASSUMPTION (continued)

Section 4566.083 deals with sexual misconduct involving a child. The prior and persistent wording in Subsection 3 would change to include prior guilty pleas and convictions or guilty pleas in other states as prior offenses (only convictions in Missouri are currently applicable). Prior and persistent is a class C felony. First offenses are a class D felony.

At the end of FY 01, there were 62 inmates in prison for sexual misconduct with a child. Twenty-six percent of these individuals had served time in prison before. It is not known for what charge. During FY 01, 22 individuals were admitted, 18% (4) of which had been in prison before. C felons serve about 4 months more in prison on average than D felons. There would likely be some impact but not a large one, unless there was a significant increase in convictions. Even if all 4 individuals were given a class C felony conviction, it would only mean 16 more months in prison for all of them.

Currently, the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY 01 average of \$35.78 per inmate per day, or an annual cost of \$13,060 per inmate) or through supervision provided by the Board of Probation and Parole (FY 01 average of \$3.34 per offender per day, or an annual cost of \$1,219 per offender).

At this time, the DOC is unable to determine the number of additional inmate beds that may be required as a consequence of passage of this proposal. Estimated construction cost for one new medium to maximum security inmate bed is \$55,000. Utilizing this per-bed cost provides for a conservative estimate by the DOC, as facility start-up costs are not included and entire facilities and/or housing units would have to be constructed to cover the cost of housing new commitments resulting from the cumulative effect of various new legislation, if adopted as statute.

In summary, supervision by the DOC through incarceration or probation would result in additional costs. Although the exact fiscal impact is unknown, DOC estimates that potential costs will be in excess of \$100,000 per year.

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
GENERAL REVENUE FUND			
<u>Costs – Department of Corrections</u> Incarceration/Probation costs	More than <u>(\$100,000)</u>	More than <u>(\$100,000)</u>	More than <u>(\$100,000)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	More than <u>(\$100,000)</u>	More than <u>(\$100,000)</u>	More than <u>(\$100,000)</u>
 <u>FISCAL IMPACT - Local Government</u>	 FY 2003 (10 Mo.)	 FY 2004	 FY 2005
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

The proposed legislation would exclude the defendant from all proceedings at which a child victim will testify in the prosecution of various sexual offenses and offenses involving children.

The proposed legislation would also revise child molestation in the first degree to include previously pleading guilty to an offense of child molestation in the first degree or pleading guilty to or being convicted of an offense in another state or jurisdiction which would constitute child molestation in the first degree if it had been committed in Missouri. Child molestation in the second degree would include pleading guilty to child molestation in the second degree or pleading guilty to or being convicted of an offense in another state or jurisdiction which would constitute child molestation in the second degree if it had been committed in Missouri. Child molestation in the second degree would be a class C felony for the first offense and a class B felony for subsequent offenses. Child molestation in the second degree is currently a class A misdemeanor for the first offense and a class D felony for subsequent offenses.

The proposal would also create the crimes of child molestation in the third and fourth degrees. Child molestation in the third degree would be a class D felony for the first offense and a class C felony for subsequent offenses. Child molestation in the fourth degree would be a class A

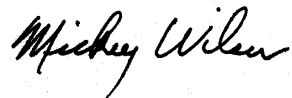
misdeemeanor for the first offense and a class D felony for subsequent offenses.

DESCRIPTION (continued)

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space. This legislation would not affect Total State Revenue.

SOURCES OF INFORMATION

Office of State Courts Administrator
Department of Corrections
Department of Social Services
Office of Prosecution Services
Office of State Public Defender



Mickey Wilson, CPA
Acting Director

February 5, 2002